

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10279 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 : NO

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ARVIND @ MUNNO DINESHBHAI DHODIYA PATEL

Versus

COMMISSIONER OF POLICE, SURAT

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Appearance:

MS DR KACHHAVAH for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 24th September, 1998 made by the

Commissioner of Police, Surat City under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. It is alleged that as many as four offences punishable under Chapters XVI and XVII of the IPC have been registered against the petitioner. The petitioner is considered to be a 'dangerous person' within the meaning of Section 2 (c) of the Act and his activities are prejudicial to the maintenance of public order. Amongst the other grounds of challenge, the learned advocate Mrs. Kachhvah appearing for the petitioner has contended that in the offence registered as CR No. 150 of 1997, the petitioner was released on bail. The fact that the petitioner had applied for release on bail and that he has been released on bail, has been specifically relied upon by the detaining authority. It is also mentioned that the petitioner had committed breach of conditions of the bail, however, the process for getting the bail cancelled could take a long time, and therefore, the preventive detention was warranted. The bail application, therefore, is a vital document and it was imperative for the detaining authority to supply copy of the said document to the petitioner alongwith the grounds of detention. However, the petitioner has not been supplied with a copy of the bail application and thus, the petitioner's right to make effective representation has been prejudiced. The action being violative of Article 22 (5) of the Constitution of India, the subjective satisfaction recorded by the detaining authority and the consequential order of detention are vitiated.

4. It is not disputed that the bail application in the above referred offence, being CR No. 150 of 1997, has not been supplied to the petitioner. It cannot be gainsaid that the bail application is a vital document and is required to be supplied to the detenu, more so because the detaining authority has relied upon the said application and the order made thereon. The reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of M. Ahamedkutty v. Union of India & Another [1990 (2) SCC 1]. The Hon'ble Supreme Court has held that, 'the bail application and the bail order constitute vital material, non-consideration of such material by the detaining authority or non-supply of the copies thereof to the detenu, would be violative of Article 22 (5) of the Consitution of India and the continued detention would be illegal.' In view of the said judgment of the Hon'ble Supreme Court, the continued

detention of the petitioner is unwarranted.

5. The petition is, therefore, allowed. The impugned order dated 24th September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*